Suruhanjaya Pilihan Raya Malaysia v Dato' Dr Abd Isa bin Ismail

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-01–386 OF 2009 AND W-02–2654 OF 2009
RAMLY ALI, LINTON ALBERTAND AZIAH ALI JJCA
25 NOVEMBER 2011

Administrative Law — Remedies — Certiorari and mandamus — Judicial review application by speaker of Kedah state legislative assembly against Election Commission 'EC' — EC's decision that Kota Siputeh state seat was not vacant — Whether seat was vacant — Whether state assemblyman of Kota Siputeh constituency absent from two consecutive meetings of legislative assembly — Whether absence constituted breach of art 51 — Whether royal proclamation an interruption in succession of the two meetings — Laws of the Constitution of Kedah arts 51 & 53

Statutory Interpretation — Construction of statute — Literal approach — Whether trial judge erred in according plain and ordinary meaning to phrase 'two consecutive meetings' in art 51 — Whether meetings that ADUN was absent from were two consecutive meetings — Exercise of powers by HRH — Whether art 53(2) imposes obligation on HRH to prorogue or dissolve assembly — Laws of the Constitution of Kedah arts 51 & 53

It was the contention of Dato' Dr Abd Isa bin Ismail, the speaker of the Kedah state legislative assembly ('the speaker'), that the state assemblyman for the Kota Siputeh constituency of Kedah ('the ADUN') had failed to attend two consecutive meetings of the assembly, on 19 April 2009 and on 9 August 2009, without notifying him or the clerk of the assembly of his absence, as was required under the Constitution of the State of Kedah ('the State Constitution'). The speaker thus took the position that these absences from two consecutive meetings of the assembly constituted a breach of art 51 of the State Constitution and that pursuant to this article the Kota Siputeh state seat had become vacant. The speaker duly wrote to the Election Commission ('the EC') to inform it that there was a vacancy in the Kota Siputeh state seat. The EC replied that the seat was not vacant as the meetings from which the ADUN was absent were not two consecutive meetings in one session within the meaning of art 51 of the State Constitution but two meetings in different sessions. This reply resulted in the speaker commencing a suit against the EC ('the first suit') applying for a judicial review of the EC's decision and seeking an order of certiorari to quash the EC's decision and an order of mandamus to compel the EC to hold a by-election for the Kota Siputeh state seat. The

speaker also commenced a suit against the ADUN ('the second suit') wherein he sought, inter alia, a writ of quo warranto to ask the latter to show cause that he was still the state assemblyman of the Kota Siputeh state seat and a declaration that the ADUN was no longer the state assemblyman for the Kota Siputeh constituency. The trial judge found that the Kota Siputeh state seat was vacant and granted the speaker the orders of certiorari and mandamus that he had sought in the first suit. As for the second suit, although the trial judge granted the a declaration that the ADUN was no longer the state assemblyman for the Kota Siputeh constituency she declined to issue a writ of quo warranto against the state assemblyman. These were the appeals by the EC and the state assemblyman against those two decisions. The speaker in turn cross-appealed against the decision of the High Court not to issue a writ of quo warranto against the state assemblyman. It was the speaker's contention that the phrase 'two consecutive meetings' in the state constitution should be given its plain and ordinary meaning and that could only mean one meeting following the earlier meeting in uninterrupted succession. The EC submitted that there was an interruption between the two meetings in the form of the proclamation by HRH that there was a prorogation or dissolution of the assembly after the assembly meeting on 19 April 2009.

Held, allowing the appeals and dismissing the cross-appeal with costs of RM5,000 awarded to the state assemblyman in respect of the second appeal:

(1) It was found that the meetings that the ADUN was absent from were not two consecutive meetings. There was an interruption in the succession of the two meetings in the form of the proclamation from, which proclaimed that the meeting on 9 August 2009 (the second meeting the assemblyman was absent from) would be the first meeting of the second session of the assembly. Further there were contemporaneous documents that showed that the two meetings were two meetings in two different sessions. As such, the EC's decision that the Kota Siputeh state seat was not vacant was correct (see para 11).

(2) Insofar as art 53 of the state constitution was concerned, the use of the word 'shall' in art 53(1) and the word 'may' in art 53(2) was by design and intended to be so interpreted. Thus, although there was an obligation imposed on HRH under art 53(1) to summon the legislative assembly for the first sitting of each session, there was no similar obligation imposed on HRH under art 53(2) for the prorogation or dissolution of the assembly. Thus, the decision to appoint 9 August 2009 as the first meeting of the second session was the decision of HRH and neither the EC nor the court was at liberty to disregard the royal proclamation (see paras 13–14).

(3) Pursuant to the findings of this court, there was no necessity to consider the speaker's cross-appeal (see para 15).

[Bahasa Malaysia summary

Adalah hujah Dr Abd Isa bin Ismail, *speaker* dewan undangan negeri Kedah ('*speaker*'), bahawa ahli dewan undangan negeri untuk daerah Kota Siputeh di Kedah ('ADUN') telah gagal menghadiri dua mesyuarat dewan berturut-turut, pada 19 April 2009 dan pada 9 Ogos 2009, tanpa memaklumkannya kepada beliau atau kerani dewan berhubung ketidakhadirannya, sepertimana dikehendaki di bawah Perlembagaan Negeri Kedah ('perlembagaan Negeri'). *Speaker* tersebut dengan itu mengambil pendekatan bahawa ketidakhadiran tersebut dari dua mesyuarat dewan berturut-turut membentuk pelanggaran perkara 51 Perlembagaan Negeri dan menurut perkara ini kerusi negeri Kota Siputeh adalah kosong. *Speaker* tersebut telah menulis kepada Suruhanjaya Pilihanraya ('SP') untuk memberitahu bahawa terdapat kekosongan untuk kerusi negeri Kota Siputeh. SP menjawab bahawa kerusi itu tidak kosong kerana mesyuarat-mesyuarat yang mana ADUN tersebut tidak hadir bukan mesyuarat-yang berturut-turut dalam satu sesi dalam maksud perkara 51 Perlembegaan Negeri tetapi dua mesyuarat dalam sesi berbeza. Jawapan ini menyebabkan *speaker* tersebut memulakan guaman terhadap SP ('guaman pertama') dengan memohon semakan kehakiman berhubung keputusan SP dan memohon perintah *certiorari* untuk membatalkan keputusan SP dan perintah *mandamus* untuk mendesak SP mengadakan pilihanraya kecil untuk kerusi negeri Kota Siputeh. *Speaker* tersebut juga telah memulakan guaman terhadap ADUN ('guaman kedua') di mana dia memohon, antara lain, writ *quo warranto* untuk meminta ADUN tunjuk sebab bahawa dia masih ahli dewan undangan negeri kerusi Kota Siputeh dan deklarasi bahawa ADUN bukan lagi ahli dewan undangan negeri untuk daerah Kota Siputeh. Hakim perbicaraan mendapati bahawa kerusi negeri Kota Siputeh kosong dan memberikan *speaker* tersebut perintah-perintah *certiorari* dan *mandamus* yang dipohonnya dalam guaman pertama. Berhubung guaman kedua, meskipun hakim perbicaraan telah memberikan hakim perbicaraan deklarasi bahawa ADUN tersebut bukan lagi ahli dewan undangan negeri untuk daerah Kota Siputeh dia enggan mengeluarkan writ *quo warranto* terhadap ahli dewan undangan negeri tersebut. Berikut adalah rayuan-rayuan oleh SP dan ahli dewan undangan negeri terhadap kedua-dua keputusan tersebut. *Speaker* tersebut dengan itu telah merayu balas terhadap keputusan Mahkamah Tinggi untuk tidak mengeluarkan writ *quo warranto* terhadap ahli dewan undangan negeri. Adalah hujah *speaker* tersebut bahawa frasa 'dua mesyuarat berturut-turut' dalam perlembagaan negeri hendaklah diberikan maksud biasa dan bahawa ia hanya boleh membawa maksud satu mesyuarat berikutan mesyuarat terdahulu dalam turutan yang tidak diganggu. SP berhujah bahawa terdapat gangguan antara dua mesyuarat tersebut dalam bentuk pengisytiharan YDPA bahawa terdapat propogasi atau pembubaran dewan tersebut selepas mesyuarat dewan pada 19 April 2009.

Diputuskan, membenarkan rayuan-rayuan dan menolak rayuan balas dengan kos RM5,000 diawardkan kepada ahli dewan undangan negeri tersebut berkaitan rayuan kedua:

(1) Adalah didapati bahawa mesyuarat-mesyuarat di mana ADUN tersebut tidak hadir bukan dua mesyuarat berturut-turut. Terdapat gangguan dalam pelaksanaan dua mesyuarat itu dalam bentuk pengisytiharan di mana telah diisytiharkan bahawa mesyuarat pada 9 Ogos 2009 (mesyuarat kedua yang mana ahli dewan undangan tidak hadir) adalah mesyuarat pertama sesi kedua dewan. Bahkan terdapat dokumen-dokumen semasa yang menunjukkan bahawa dua medyuarat tersebut adalah dua mesyuarat dalam dua sesi berbeza. Oleh tu, keputusan SP bahawa kerusi negeri Kota Seputeh tidak kosong adalah betul (lihat perenggan 11).

(2) Setakat mana perkara 53 Perlembagaan Negeri adalah berkaitan, penggunaan perkataan 'hendaklah' dalam perkara 53 dan perkataan 'boleh' dalam perkara 53(2) direka dan diniat untuk ditafsirkan sedemikian. Oleh itu, meskipun terdapat obligasi dikenakan ke atas YDPA di bawah perkara 53(1) untuk memanggil dewan undangan untuk kerusi pertama setiap sesi, tidak terdapat obligasi sama yang dikenakan ke atas YDPA di bawah perkara 53(2) untuk propogasi atau pembubaran dewan tersebut. Oleh itu, keputusan untuk menetapkan 9 Ogos 2009 sebagai mesyuarat pertama sesi kedua adalah keputusan YDPA dan SP mahupun mahkamah tidak mempunyai kebebasan untuk mengabaikan pengisytiharan diRaja tersebut (lihat perenggan 13–14).

(3) Berdasarkan penemuan-penemuan mahkamah ini, rayuan balas Speaker tidak perlu dipertimbangkan (lihat perenggan 15).]

Notes

For cases on certiorari and mandamus, see 1(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 607–610.

For cases on literal approach, see 11 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1826–1855.

Cases referred to

Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano [1997] 1 MLJ 94; [1997] 1 CLJ 636, FC (refd)

Manokaran a/l Subramaniam v Ranjid Kaur a/p Nata Singh [2009] 1 MLJ 21; [2008] 6 CLJ 209, FC (refd)

Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Hj Ibrahim & Ors [1988] 3 MLJ 82, SC (refd)

Legislation referred to

Federal Constitution arts 132(1), 132(3)(b)
Laws of the Constitution of Kedah arts 2, 51, 53, 53(1), (2), (3)

Appeal from: Application for Judicial Review No R4–25–304 of 2009 (High Court, Kuala Lumpur)

Amarjeet Singh a/l Serjit Singh (Suzana Atan with him) (Senior Federal Counsel, Attorney General's Chambers) for the appelant in W-01–386 of 2009.
Sulaiman Abdullah (Edmund Bon Tai Soon and Zulkarnain bin Luqman with him) (Chooi & Co) for the respondent in W-01–386 of 2009.
Mohd Hafarizam Harun (Firoz Hussein Ahmad Jamaluddin with him) (Hafarizam Wan & Aisha Mubarak) for the appelant in W-02–2654 of 2009.
Sulaiman Abdullah (Edmund Bon Tai Soon and Zulkarnain bin Luqman with him) (Chooi & Co) for the respondent in W-02–2654 of 2009.

Aziah Ali JCA:

[1] The appellant in Civil Appeal No W-01–386 of 2009 the Election Commission ('the EC'), and the appellant in Civil Appeal No W-02–2654 of 2009 Dato' Abu Hasan bin Sarif, the State Assemblyman for the Kota Siputeh constituency of Kedah ('the ADUN') appeal against the decision of the learned High Court judge made in an application for judicial review filed by Dato' Dr Abd Isa bin Ismail who is the speaker of the Kedah State Legislative Assembly, the respondent in both appeals.

BACKGROUND

[2] The ADUN had been absent for the meetings of the State Assembly on 19 April 2009 and on 9 August 2009. The ADUN had submitted to the respondent an explanation and medical certificate for the period 9 August 2009–10 August 2009 but the respondent rejected the medical certificate and the explanation. The respondent took the position that these absences from two consecutive meetings of the assembly were without leave of the respondent as speaker as required by art 51 of the Constitution of the State of Kedah ('the State Constitution') and that pursuant to the said article the Kota Siputeh State Seat had become vacant.

[3] Pursuant thereto the respondent wrote a letter dated 17 August 2009 to the EC informing the EC that there was a vacancy in the Kota Siputeh state seat. By a letter dated 1 September 2009 the EC replied amongst others that:

(a) the ADUN is still the ADUN for Kota Siputeh;

(b) the seat is not vacant;

(c) the meetings which were not attended by the ADUN were not two consecutive meetings in one session within the meaning of art 51 of the State Constitution but two meetings in different sessions; and

(d) the EC accepted the medical certificate tendered as explanation for the ADUN's absence from the meeting on 9 August 2009.

[4] The EC's reply resulted in the application for judicial review. In the application for judicial review, as against the EC the respondent had sought an order of certiorari to quash the EC's decision and/or action as per its letter dated 1 September 2009 and an order of mandamus to compel the EC to hold a by-election for the Kota Siputeh state seat. Against the ADUN the respondent sought orders which in effect are as follows:

(a) a writ of quo warranto to ask the ADUN to show cause and give confirmation how and under what basis/or authority that he is still the State Assemblyman for Kota Siputeh;

(b) a declaration that the ADUN is no longer the Kota Siputeh Assemblyman;

(c) declaration that the ADUN is no longer the Kota Siputeh Assemblyman;

(d) a mandatory injunction preventing the ADUN and/or his agents from carrying out the responsibilities, function and duties as Kota Siputeh Assemblyman.

The learned judge agreed with the respondent and held that the assembly's meetings on 19 April 2009 and on 9 August 2009 were two consecutive meetings and therefore the ADUN's absences constituted absences for two consecutive meetings in the same session of the assembly. Applying art 51 of the State Constitution the learned judge granted the declaratory order that the ADUN was no longer the Kota Siputeh Assemblyman and that the Kota Siputeh state seat was vacant. Consequently the learned judge granted an order of certiorari to quash the decision of the EC and an order of mandamus to compel the EC to issue a Writ of Election and to hold a by-election. Both the EC and the ADUN are dissatisfied with the decision of the learned judge. Hence these appeals. The learned judge however declined to issue a writ of quo warranto upon her finding that a writ of quo warranto cannot be issued against the ADUN on the ground that art 132(3)(b) of the Federal Constitution expressly excludes the office of a member of the Legislative Assembly of a State from the category of 'public services' as enumerated under art 132(1). The respondent has cross-appealed against this decision. Having heard submissions, by a unanimous decision we allowed the appeals by the EC and the ADUN. Consequentially the respondent's cross-appeal was dismissed. We now give our reasons.

THE EC'S CASE

[5] For the EC learned senior federal counsel refers to the proclamations

issued by His Royal Highness ('HRH') the Sultan of Kedah in exercise of the power conferred on HRH by art 53 of the State Constitution and published in the Kedah Government *Gazette* dated 26 March 2009 and 30 July 2009 respectively. By the proclamation issued by HRH dated 25 February 2009 and published in the Kedah Government *Gazette* dated 26 March 2009, HRH proclaimed the date 19 April 2009 as the date of the fifth meeting of the first session of the State Legislative Assembly. The proclamation reads, inter alia, as follows:

> … WE AL-SULTAN ALMU'TASIMU BILLAHI MUHIBBUDDIN TUANKU ALHAJ ABDUL HALIM MU'ADZAM SHAH IBNI AL-MARHUM SULTAN BADLISHAH … in exercise of the power conferred on US under Article 53 of the Laws of the Constitution of Kedah DO HEREBY SUMMON the Legislative Assembly and appoint 19th April 2009 corresponding to the 23rd Rabiulakhir 1430 at the hour of 9.00 in the forenoon as the date and time of the Fifth Meeting of the First Session of the TWELFTH Legislative Assembly of the State of Kedah Darul Aman …

The proclamation issued by HRH dated 1 July 2009 and published in the Kedah Government Gazette dated 30 July 2009 reads in the same vein but with the date 9 August 2009 being proclaimed by HRH as the date of the first meeting of the second session of the Twelfth Legislative Assembly.

[6] Learned senior federal counsel submits that the meeting on 19 April 2009 being the fifth and last meeting of the first session and, the meeting on 9 August 2009 being the first meeting of the second session, are not 'two consecutive meetings' as envisaged by art 51 of the State Constitution which reads as follows:

> If any member of the Legislative Assembly is absent from the Assembly without leave of the Speaker for two consecutive meetings his seat shall become vacant.

It is submitted that the phrase 'two consecutive meetings' is to be construed as two consecutive meetings in the same session. Thus it is submitted that the ADUN was not absent for two consecutive meetings but rather he was absent for the fifth meeting of the first session held on 19 April 2009 and the first meeting of the second session held on 9 August 2009. Therefore it is contended that the failure of the ADUN to attend the meetings on 19 April 2009 and on 9 August 2009 was not absence from two consecutive meetings as contended by the respondent. Learned senior federal counsel submits that the proclamation dated 1 July 2009 is clear in its terms and the summoning of the first meeting of the second session is evidence that for all intent and purposes the first session has been or is deemed prorogued.

THE RESPONDENT'S CASE

[7] For the respondent learned counsel submits that 'two consecutive

meetings' in the State Constitution must be given its plain and ordinary meaning and can only mean one meeting following the earlier meeting in uninterrupted succession. In support counsel referred to the definition of 'consecutive' found in the *Shorter Oxford English Dictionary on Historical Principles* as 'Following continuously: following each its predecessor in uninterrupted succession'. Learned counsel submits that a 'session' will continue until it is dissolved or prorogued and refers to the definition of 'session' under art 2 of the State Constitution. Counsel submits that there was no prorogation or dissolution of the assembly after the fifth meeting of the first session. Thus despite the proclamation by HRH that the meeting on 9 August 2009 was the first meeting of the second session, it is contended that the meeting on 9 August 2009 was held as part of the first session. The respondent contends that the ADUN had failed to attend two consecutive meetings of the assembly without notifying his absence to the speaker or the clerk of the assembly as required under the State Constitution and the Kedah Standing Rules and Orders.

[8] The learned judge agreed with counsel for the respondent that applying the definition of 'consecutive' in its plain and ordinary meaning the fifth meeting of the first session on 19 April 2009 and the first meeting of the second session on 9 August 2009 were 'two consecutive meetings' within the meaning of art 51 of the Kedah Constitution. The learned judge found that the meetings on 19 April 2009 and on 9 August 2009 were held in 'uninterrupted succession' in a single session.

[9] The learned judge disagreed with the learned senior federal counsel that the proclamation dated 1 July 2009 by which HRH proclaimed the date 9 August 2009 as the date of the first meeting of the second session is deemed to have prorogued the first session. The learned judge opined that it would be erroneous to assume that the proclamation describing the meeting on 9 August 2009 as the first meeting of the second session is evidence that the assembly had been prorogued. Her Ladyship, though accepting that under art 53(2) of the State Constitution the power to prorogue the Legislative Assembly is a discretionary power of HRH, is of the view that the prorogation of the assembly cannot be inferred, implied or deemed but must be expressedly exercised by HRH in the same manner that HRH does in exercising his power to dissolve the assembly, and that is by issuing a proclamation. Her Ladyship found that in the absence of evidence of prorogation, the meeting on 9 August 2009 though described in the proclamation as the first meeting of the second session was, in law, the sixth meeting of the first session. The learned judge held that there was no second session. Thus the learned judge agreed with the respondent that the ADUN was absent for two consecutive meetings in the same session.

[10] Before us learned senior federal counsel submits that the learned judge has erred in according a plain and ordinary meaning to the phrase 'two consecutive meetings' as proposed by the respondent and construing the said phrase in isolation and without regard to the definitions of 'meetings' and 'sessions' as provided under art 2 as follows:

> 'meeting' means any sitting or sittings of the Legislative Assembly commencing when the Assembly first meets after being summoned at any time and terminating when the Assembly is adjourned sine die or at the conclusion of a session without adjournment;
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> 'session' means the sittings of the Legislative Assembly commencing when the Assembly first meets after being constituted or after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or dissolved without having been prorogued.

Learned senior federal counsel submits that these provisions when considered as a whole would show that 'two consecutive meetings' must be construed to mean two consecutive meetings in one session and not in separate sessions of the State Assembly. It is submitted that the last sitting in one session is the assembly's last meeting of that session and the first meeting in the next session is the assembly's first meeting of the new session. Thus it is submitted that meetings can only consecutively exist in their respective sessions. The termination of a preceding session is an interruption of sequence.

[11] We agree with learned senior federal counsel that the meetings on 19 April 2009 and 9 August 2009 were not two consecutive meetings. We find that there was an interruption in their succession in the form of the proclamation dated 1 July 2009 which, in proclaiming that the meeting on 19 August 2009 would be the first meeting of the second session had, in effect, terminated the first session of the assembly. Further we find from contemporaneous documents in the form of the letter dated 17 August 2009 written by the respondent himself to the ADUN which shows that the respondent accepted that the meeting on 19 April 2009 was the fifth meeting of the first session and the meeting on 9 August 2009 is the first meeting of the second session. There is also the letter dated 12 October 2009 written by the secretary of the State Legislative Assembly giving notice that the budget 2010 meeting of the assembly would be held on 17 November 2009 in the assembly's second meeting of the second session. Therefore we agree with the EC that the ADUN had not been absent for two consecutive meetings. Consequently his seat had not become vacant.

[12] The learned judge found no evidence of prorogation of the first session. Her Ladyship is of the view that the prorogation of the assembly cannot be

inferred, implied or deemed but must be expressedly exercised by HRH. With respect we are of a different view. Article 53(1) and (2) of the State Constitution provide as follows:

(1) The Ruler *shall* from time to time summon the Legislative Assembly and *shall* not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Ruler *may* prorogue or dissolve the Legislative Assembly.

In *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Hj Ibrahim & Ors* [1988] 3 MLJ 82 Hashim Yeop Sani SCJ said:

> It is trite law that where the words of a statute are clear, there is no room for the court to go beyond the expressed language of the statute

It is apparent that whilst the word 'shall' appears in art 53(1), in art 53(2) the word 'may' is used. In the case of *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* [1997] 1 MLJ 94; [1997] 1 CLJ 636 the Federal Court said, inter alia, as follows:

> The function of a court when construing an Act of Parliament is to interpret the statute In order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. Prima facie, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:
>
> As a general rule a court will adopt that construction of a statute which will give some effect to all of the words which it contains, per Gibbs J in *Beckwith v R* (1976) 12 ALR 333, at p 337.

In *Manokaran a/l Subramaniam v Ranjid Kaur a/p Nata Singh* [2009] 1 MLJ 21; [2008] 6 CLJ 209, Arifin Zakaria FCJ (now CJ) said as follows:

> It is a principle of statutory interpretation that when the legislature uses different language in the same connection, in different parts of the statute, it is presumed that a different meaning and effect is intended, and if different language is used in contiguous provisions, it must be presumed to have done so designedly. (*NS Bindrai's Interpetation of Statutes*, (8th Ed), at p 275). The right approach to interpretation of statute is as stated by Higgins J in *Amalgamated Society of Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at pp 161–162 which reads:
>
> The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.

[13] Insofar as art 53 is concerned, it is our considered opinion that the use of the word 'shall' in art 53(1) and the word 'may' in art 53(2) is by design and intended to be so interpreted. We are of the view that by the word 'shall' appearing in art 53(1) an obligation is imposed on HRH to summon the Legislative Assembly for the first sitting for each session. However for the prorogation or dissolution of the assembly, we are of the view that by the use of the word 'may' in art 53(2), there is no similar obligation imposed on HRH. In other words the issuance of a proclamation to prorogue or dissolve the assembly is at the discretion of HRH. For the reasons stated we are unable to agree with the learned judge that HRH must issue a proclamation to prorogue the assembly. We find art 53(2) imposes no such obligation on HRH. However we venture to add that in the case of dissolution of the assembly for reasons other than the expiry of the five-year term as specified under art 53(3), a proclamation of such dissolution would be rendered necessary.

[14] By the proclamation dated 1 July 2009 HRH in clear words had summoned the Legislative Assembly to its first meeting of the second session. The decision to appoint 9 August 2009 as the first meeting of the second session was the decision of HRH. We are of the view that effect ought to be given to the clear words of the said proclamation which was issued by HRH in exercise of his powers under art 53. We are of the considered opinion that neither the EC nor the court is at liberty to disregard the royal proclamation. To do so would be to negate the command of HRH that the sitting of the assembly on 9 August 2009 shall be the assembly's first meeting of the second session.

[15] Pursuant to our findings above we find no necessity to consider the cross-appeal. However we take the opportunity to state that we are in full agreement with the learned judge that the writ of quo warranto cannot be issued against the ADUN for the reasons given by Her Ladyship. We therefore allowed the appeals and dismissed the cross-appeal. The decision of the High Court is thereby set aside and we ordered the ADUN to be reinstated to his position. In respect of Civil Appeal No W-01–386 of 2009 the EC did not pray for costs. In respect of Civil Appeal No W-02–2654 of 2009 we awarded costs of RM5,000 to the appellant.

Appeals allowed and cross-appeal dismissed with costs of RM5000 awarded to state assemblyman in respect of second appeal.

Reported by Kohila Nesan